IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NOS. 61 AND 64 OF 2002

1. Special Land Acquisition
   Officer(South Goa)
   Konkan Railway Corporation
   Limited, Amey Guest House,
   Davorlim Road, P.O. Navelim,
   Salcete Goa, 403 707.

2. Chief Engineer,
   Konkan Railway Corporation Ltd.
   Rawnford, near Margao Railway
   Station, Margao-Goa. ... Appellants.

versus

Francisco Antonio Abel Pereira
e Silveira, House No.48, Naroa,
P.O. Piedade, Tiswadi-Goa. ... Respondent.

Mr. E. Afonso, Advocate for the Appellants in both the Appeals.

Mr. V. B. Nadkarni, Senior Advocate with Mr. Y. V. Nadkarni, Advocate for the Respondents in both the Appeals.

CORAM : P. V. HARDAS &
N. A. BRITTO, JJ.

DATE : 1ST SEPTEMBER,2004.

ORAL JUDGMENT(PER N.A.BRITTO,J.)

These two Appeals are filed against Judgments/Awards dated 31st August, 2001 of the learned Additional District Judge, South Goa, Margao, in Land Acquisition Cases Nos.348/95 and 310/95.

2. The parties hereto shall be referred to in the

names as they appear in the cause title of the said cases.

3. The Applicant was the owner of land surveyed under Chalta Nos.5, 6 and 7 of P.T. Sheet No.263. By virtue of Notification published in Official Gazette dated 16th May, 1991, the Government acquired 9596 sq. metres of the said land and by another Notification published in Official Gazette dated 27th June, 1991, the Government acquired another 2314 sq. metres of land. The said acquisitions were made for the purpose of construction of new B.G. Lines of Konkan Railway, Margao Depot, etc. Phase I and Phase II, respectively.

4. The Land Acquisition Officer by Award dated 1st August, 1994 awarded compensation for the first acquisition at the rate of Rs.3/-, Rs.7.50 and Rs.25/- although the entire area of 9596 sq. metres was a paddy field. As regards the second acquisition, the Land Acquisition Officer awarded compensation at the rate of Rs.3/- and Rs.7.50.

5. Dissatisfied with the compensation awarded by the Land Acquisition Officer the Applicant sought a reference to be made to the District Court and in the said reference initially claimed enhancement at the rate

of Rs.600/- per sq. metre but later at the rate of Rs.345/- per sq. metre.

6. The Applicant examined himself and produced amongst other documents a Sale Deed dated 29th March, 1993 and in support of the same examined A.W.4, Blasio D'Costa and A.W.5, Jose Heredia. The Applicant also produced an agreement dated 20th December, 1985 and in support of the same examined A.W.3, Anand Shetye. The Applicant also produced two Awards of the learned Additional District Judge, South Goa, Margao, dated 18th April, 1985 in Land Acquisition Case Nos.85/90/A and 87/90/A.

7. The Applicant's land which was partly bharad, partly bund and partly uncultivated paddy field, was situated between the Railway Line on one side and abutting the Margao-Quepem road on the other side. There is no dispute that the Applicant had a house in Chalta No.6 from the year 1980. The Applicant's land was otherwise situated in a locality where there were shops and at a distance of about 100 metres or so from Dr. Rajendra Prasad Stadium, 50 metres away from E.S.I. Hospital and Deccan Tyre Factory, etc. There were buildings containing residential flats at a distance of about 100 metres or so. As stated by the Applicant there was tap water, electricity and telephone facilities

available at the time of acquisition. The Applicant's land was not only situated within the limits of Margao Municipal Council but was situated at a distance of about half km. from the junction of Margao-Canacona and Margao-Quepem roads and at a distance of 750 metres from the building of Margao Municipal Council. In other words, the Applicant's land was not only located in a prominent place within the limits of Margao Municipal Council but the Applicant with a view to develop the said property had even obtained a provisional N.O.C. from the Southern Planning and Development Authority for the purpose of converting the said land in plots and for selling the same.

8. Mr. E. Afonso, learned Counsel for the Appellants submitted that the Sale Deed dated 29th March, 1993 was not a comparable sale instance and, therefore, could not have been relied upon for the purpose of fixing the market value of the acquired land. Mr. Afonso, learned Counsel, placed reliance on a Judgment of this Court, which pertained to the same Notification under Section 4(1) of the Act in the case of **Special Land Acquisition Officer and another** v. **Amilcar Rosario B. Pereira**(First Appeal No.98 of 1999 delivered by a Division Bench of this Court on 6th June, 2004, to which one of us, Britto, J. was a party) and submitted that

based on the said Judgment and with suitable deductions the price of the acquired land could be fixed.

9. On the other hand, Mr. V. B. Nadkarni, learned Senior Counsel for the Respondents submitted that no fault could be found with the Award of the learned Reference Court in fixing the market value based on the said Sale Deed dated 29th March, 1993. Mr. Nadkarni, learned Senior Counsel, placed reliance on the case of **Ibrahim AkbarAlli and others** v. **The District Deputy Collector, Pandharpur Division, District Sholapur** (1969 (3) SCC 735) in support of his proposition that the entire land ought to be assessed as one unit. In that case, the Hon'ble Supreme Court observed that it is well established that adaptability of the agricultural land as site for buildings is an essential element to be taken into account for determining the market value. In the case of **Vyricherla Narayana Gajapatiraju** v. **Revenue Divisional Officer** (AIR 1939 P C 98) it was observed by the Privy Council that land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined but also by reference to the uses to which it is reasonably capable of being put in future. It is the possibilities of the land and not its realized possibilities that must be taken into consideration. The Hon'ble Supreme Court also observed that although major portion of the land bore the

technical nomenclature non agricultural land, the entire land should be valued on the basis of its adaptability for building purposes.

10. The learned Reference Court rejected the opinion of the expert Shri Moniz, and in our view, rightly. The said report was not only in respect of an inspection carried out about 4 years later but it was based on a Deed dated 29th March, 1993, which did not at all reflect a sale price of Rs.268/- per sq. metre, as will be seen, little later.

11. The learned Reference Court, however, used the Sale Deed dated 29th March, 1993, as a basis and fixed the compensation of the acquired land at Rs.268/- per sq. metre without making any deductions whatsoever inspite of the fact that the Applicant had admitted that the property of the said Sale Deed was suitable for construction and was on a higher level than his paddy field. The Applicant also admitted that the expenses for development of the said property of the said Sale Deed would be less.

12. In our view, the learned Reference Court was not at all justified in using the Sale Deed dated 29th March, 1993 as a comparable sale instance. The

submission that the said Sale Deed dated 29th March, 1993 reflected a price of Rs.268/- per sq. metre appears to be a myth.

13. The documents produced by the Applicant show that the parties to the Civil Suit No.65/28/A, pending before the learned Senior Civil Judge at Margao, were unable to come to an agreement relating to the sale of two of their properties and not only that some of the parties owed a sum of Rs.14,81,995.47 to Goa Urban Co-operative Bank, against the said properties. As a result, two of the properties belonging to the said parties were put for auction which was held on 15th March, 1990. M/s Alcon Real Estate Pvt. Ltd.(Alcons for short) were the highest bidders in respect of both the properties. They bidded the first property at Rs.7.5 lakhs and the second property known as Malbotta admeasuring 11,583,50 sq. metres at Rs.31,00,600/-. It is the second property which reflected a sale price of Rs.268/- per sq. metre. However, the controversy between the parties to the said suit did not end there. The said parties and the said Alcons then entered into an agreement on the same day and by virtue of this agreement, Alcons agreed to purchase the second property and two other properties belonging to the said parties. The area of these two other properties agreed to be purchased by Alcons was not mentioned in the agreement.

The Alcons agreed to purchase the said second, third and fourth properties, not for the said sum of Rs.31,00,600/- but for a revised price of Rs.34,67,000/-. It is this agreement which culminated in the execution of the said Sale Deed dated 29th March, 1993 by which the second, third and fourth properties were purchased by the said Alcons, the area of one of them being known while the areas of the other two remaining unknown. In the absence of the areas of the third and fourth properties being mentioned either in the said agreement or on the said Sale Deed, it could not have been said that the property purchased by Deed dated 29th March, 1993, reflected a price of Rs.268/- per sq. metre. We are informed that on the said properties purchased at Malbotta, by Deed dated 29th March, 1993, the said Alcons have subsequently put up a prestigious hospital known as "Apollo-Victor" Hospital. The Applicant as well as A.W.5, Jose Heredia, made an attempt to show that the said properties purchased by Alcons by Deed dated 29th March, 1993, were inaccessible with a view to show that the Applicant's property was better situated than the property purchased by the said Alcons. It is well said that witnesses may lie but the documents do not. The Sale Deed shows that the third property was bounded on the West by road and chapel, and, the fourth property was bounded on the South by the gutter of Margao-Quepem road. It appears that the

said Alcons bidded for the said properties or for that matter agreed to purchase the said properties with a view to develop them commercially. The manner in which the Alcons went about first bidding for the said properties, then entering into an agreement, does not show that Alcons were acting as normal, prudent and willing purchasers in normal market conditions. In our view, the said Sale Deed dated 29th March, 1993, therefore, could not have formed the basis for fixing the market value of the acquired land.

14. Mr. Nadkarni, then submitted that the price of the acquired land be fixed based on the said agreement dated 20th December, 1985, in support of which A.W.3, Anand K. Shetye was examined.

15. Although, the Applicant produced two Awards in Land Acquisition Cases Nos.85/90/A and 87/90/A, the Applicant produced no evidence whether the land of the said Awards could be compared with the acquired land. According to the Applicant, the land of the said two Awards was a paddy field but a reading of the said two Awards shows that they were partly paddy fields and partly coconut groves and they were much better located, being situated at a distance of about 400 metres from Margao Town proper. It is not the case of the Applicant

that he had seen the lands of the said Awards prior to the date of Notification on 30th December, 1982. The said two Awards therefore cannot form the basis on which market value could be fixed.

16. We are not inclined to fix the market value of the acquired land on the basis of the said agreement dated 20th December, 1985. It is to be noted that compensation is required to be fixed by adopting a pragmatic approach. There should not be unjust enrichment on the part of the Government nor there should be undue deprivation on the part of the owner. In this very locality, where the acquired property was situated and to a paddy field similar to that of the Applicant, the learned Reference Court in Land Acquisition Case No.347/95, by relying on a Sale Deed dated 1st July, 1987, had fixed compensation payable therein at the rate of Rs.160/- per sq. metre. It is to be noted that the land of the said Sale Deed dated 1st July, 1987 was not very far from the acquired land.

17. A Division Bench of this Court in First Appeal No.98 of 1999(to which one of us, Britto, J. was a party) did not interfere with the said Award of the learned Reference Court in Land Acquisition Case No.347/1995. In our view, the Applicant could be awarded the same compensation as was fixed by the learned

Reference Court in Land Acquisition Case No.347/1995 and upheld by this Court in First Appeal No.98 of 1999 but with some additions because of some development carried out by the Applicant.

18. In the case of **M/s. Printers House Pvt. Ltd.** v. **Mst. Saiyadan**(AIR 1994 SC 1160), the Supreme Court has stated that:-

> " If 'Comparable Sales Method of Valuation of land' is adopted for determining the market value of an acquired plot of land, it generally holds good for determination of the market value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same preliminary Notification".

19. The Supreme Court in the case of **Union of India** v. **Shri Dhyan Singh and others**(2000 AIR SCW 4936) observed as follows:-

> "In view of the decision of this Court in Civil Appeal No.4405 of 1997 in which the land value has been fixed at Rs.16,750/- per bigha for lands covered by the same Notification there is no reason not to adopt the same value as for the land involved in this appeal also".

20. In the case of **Bhim Singh** v. **State of**

Haryana(AIR 2003 SC 4382), the Supreme Court observed thus:-

> "Even otherwise when compensation has already been fixed by the High Court in earlier proceedings and when in one such proceeding this Court has already approved the rate fixed then in our view the best method would be to look at the earlier Judgments and Awards. Therefore, the High Court cannot be faulted for having fixed compensation on the basis of earlier Judgments".

21. Following the ratio of the above decisions, we have fixed compensation payable at the rate of Rs.160/- per sq. metre in First Appeal No.62 of 2002 arising from Land Acquisition Case No.314/95 pertaining to the same Notification. Although the land in Land Acquisition Case No.347/95(First Appeal No.98 of 1999) was also a paddy field situated very near the acquired land and covered by the same Notification of the Applicant, note is required to be taken of the fact that the Applicant in this case had obtained necessary provisional permissions for development of his land and not only that had also incurred substantial expenditure, as stated by him, towards the development of the same. The compensation payable to the Applicant, therefore, has got to be a little higher than the compensation ordered to be paid to the Applicant in Land Acquisition Case No.347/95.

22. Considering the facts of this case, therefore, we fix the compensation payable to the Applicant at the rate of Rs.170/- per sq. metre.

23. In view of the above, we allow the Appeal partly and modify the impugned Judgments/Awards of the learned Additional District Judge, South Goa, Margao, and fix the compensation payable to the Applicant at the rate of Rs.170/- per sq. metre. Needless to say, the Applicant would be entitled to all consequential statutory benefits. We leave the parties to bear their own costs.

P. V. HARDAS, J.

N. A. BRITTO, J.

RD.